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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

In re RAMIRO C., a Person Coming Under the Juvenile Court Law.
THE PEOPLE, Plaintiff and Respondent, v. RAMIRO C., Defendant and Appellant.

G027167

(Super. Ct. No. DL001434)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Gregory Jones, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Fay Arfa, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, David P. Druliner, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., Raquel M. Gonzalez and Felicity Senoski, Deputy Attorneys General, for Plaintiff and Respondent.

Ramiro C. appeals from a juvenile court judgment finding he committed continuous sexual abuse against two of his cousins, Vanessa and Cynthia. He contends: (1)

the charging petition failed to specify the basis of the allegations; (2) there is insufficient evidence to support the judgment; (3) he was too young to harbor criminal intent at the time of the offenses; and (4) the court erred in committing him to the California Youth Authority (CYA). Finding no basis for reversal, we affirm the judgment.

* * *

In the spring of 1997, when Ramiro turned 13 years old, Vanessa was 10 and Cynthia was 7. The girls lived with their mother during the week, but on weekends and holidays they stayed at their grandmother Maria's house. Several people lived at the house, including Ramiro.

Starting in March of 1997, Ramiro sexually abused Vanessa between five and nine times. Nearly all of the incidents occurred at Maria's house, but one occurred at Vanessa's aunt's house. On that occasion, Ramiro came into Vanessa's room while she was sleeping and put his finger inside her vagina. When Vanessa realized what Ramiro was doing, she said she had to use the bathroom. At that point, Ramiro left.

Another time, Ramiro grabbed Vanessa's vagina while they were playing on the floor. He then told her to get on the bed. After she did, he touched her vagina with his hand and sodomized her.

Another episode occurred after Ramiro convinced Vanessa to join him in the closet during a game of hide and seek. In the darkness, he rubbed her vagina through her clothes.

Ramiro did the same thing to Vanessa one day when they were watching television on Maria's bed. Another time when they were on the bed, he pulled down her shorts and anally penetrated her with his penis. Vanessa said Ramiro also took advantage of her once when they were under some blankets in the living room, but she does not recall exactly what happened on that occasion.

Cynthia's recollection of how Ramiro sexually abused her was also less than perfect. At first she testified he only touched her "pee" area. Then she said he also put his

penis inside her “cocha” or buttock. She was certain he touched her private parts on more than three occasions, however. The first incident occurred when she was eight, and the last one occurred when she was nine. All of the acts took place at Maria’s house. Sometimes Ramiro put a cream on his penis when he penetrated her. It was very painful, and afterwards there would be “wet stuff” around her vagina. One time, he had her rub his penis, and another time he put his fingers inside her vagina.

Ramiro told the girls not tell anyone what he had done to them, so they refrained from doing so. At least until their ten-year-old sister Jessica accused Ramiro of sexual abuse in March of 1999.¹ At that point, they revealed Ramiro’s misconduct. Cynthia told the police that Ramiro had put his penis in her vagina and buttock. She also said Ramiro had made her stroke his penis, which he had lubricated with cream, and penetrated her anus with his fingers. She made similar allegations to a nurse and her social worker. Vanessa also recounted Ramiro’s abuse to others. She disclosed to a nurse that Ramiro had penetrated her anus with his penis and touched her vagina with his fingers. She also provided details about the time Ramiro sexually abused her in the closet.

Ramiro testified he never touched Vanessa or Cynthia in an inappropriate manner. However, he did admit that when the police asked him if he thought the girls were lying he said no.

The court did not think the girls were lying either. After giving their testimony “a great deal of thought,” it was firmly convinced they had been abused by Ramiro. It acknowledged they made some inconsistent statements during the course of the case, but it attributed them more to lack of memory than lack of credibility. In the court’s view, the detail of the allegations, the manner in which they surfaced, and the absence of a motive to lie were all strong indicators the girls were telling the truth. The court was also swayed by Cynthia’s and Vanessa’s demeanor, which it found was “very consistent with

¹ The prosecution charged Ramiro with continuous sexual abuse against Jessica, but it subsequently dismissed that charge.

what we would expect from two small girls who had been involved in this type of activity.” It therefore sustained the charges of continuous sexual abuse.

I

Ramiro argues the charging petition was uncertain because it did not specify what type of conduct he was accused of. The argument has been waived.

The prosecution charged Ramiro with committing continuous sexual abuse within the meaning of Penal Code section 288.5.² That section defines continuous sexual abuse as “three or more acts of substantial sexual conduct with a child . . . as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd and lascivious conduct under Section 288” However, instead of charging Ramiro in this language, the prosecution alleged he “did willfully and unlawfully engage in three (3) and more acts of lewd and lascivious conduct under . . . section 288, as defined in . . . section 1203.066(b).”

The Attorney General concedes the charging document is unclear as to whether the prosecution was attempting to charge Ramiro only under the theory he committed three or more acts of lewd and lascivious conduct (in which case the reference to section 1203.066 was superfluous), or whether the prosecution also intended to allege a violation under the substantial sexual conduct theory. However, at this stage of the case it doesn’t matter. ““Any uncertainty in the pleading amounts to no more than a defect of form, which should be attacked under . . . section 1004. Failure to demur to an information on the ground of uncertainty constitutes a waiver of the objection . . . , and the validity of the subsequent objection is not affected.” [Citations.]” (*People v. Jennings* (1991) 53 Cal.3d 334, 356.) Because Ramiro did not demur to the petition, he has waived his right to challenge it on appeal.

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All further statutory references are to this code.

II

Ramiro also contends there is insufficient evidence he subjected Cynthia or Vanessa to continuous sexual abuse. In his view, Cynthia's testimony was too vague and Vanessa failed to describe the requisite acts. We do not share this view.

“The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness's credibility for that of the fact finder. [Citations.]” (*People v. Jones* (1990) 51 Cal.3d 294, 314; see also *In re Roderick P.* (1972) 7 Cal.3d 801, 809 [same standard of review applies in juvenile court proceedings].)

In *Jones*, the court rejected the notion that generic testimony regarding molestation is insufficient to support a conviction for child sexual abuse. Because “the particular details surrounding a child molestation charge are not elements of the offense,” the court determined it was unnecessary for the victim to describe the precise date, time, place or circumstance of the abuse. (*People v. Jones, supra*, 51 Cal.3d at p. 315.) To support a charge of child sexual abuse, the victim need only specify: (1) “*the kind of act or acts committed* with sufficient specificity, both to assure that unlawful conduct indeed has occurred and to differentiate between the various types of proscribed conduct,” (2) “*the number of acts* committed with sufficient certainty to support each of the counts alleged in the information or indictment,” and (3) “*the general time period* in which these acts

occurred [] to assure the acts were committed within the applicable limitation period.” (*Id.* at p. 316.) “Additional details regarding the time, place or circumstance of the various assaults may assist in assessing the credibility or substantiality of the victim’s testimony, but are not essential to sustain a conviction.” (*Ibid.*)

Contrary to Ramiro’s belief, Cynthia’s testimony was sufficient under the criteria set forth in *Jones*. She said he penetrated both her vagina and rectum with his penis, and she provided details as to how this occurred. She explained that Ramiro would get on top of her and continue until he ejaculated. Sometimes he would put a cream on his penis, but not always. Cynthia also described how Ramiro put his fingers inside her vagina and made her touch his penis. Thus, the kind of acts involved were clearly specified and differentiated. In addition, Cynthia stated the acts occurred on more than three occasions, which is sufficient to satisfy the definition of substantial sexual conduct. And finally, she was certain that the acts occurred when she was eight and nine years old, which means they took place in 1998 and 1999 and were prosecuted within the statute of limitations. While Cynthia was not able to remember all of the details surrounding the alleged acts, her testimony was sufficiently certain to support the court’s verdict.

Ramiro takes a different tack in challenging the evidence with respect to Vanessa. He claims her testimony was lacking because she did not describe three separate incidents of substantial sexual conduct. That is not true. Substantial sexual conduct is defined as “penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, oral copulation, or masturbation of either the victim or the offender.” (§ 1203.066, subd. (b).) As Ramiro admits, Vanessa described two different incidents in which he penetrated her rectum with his penis. In addition, Vanessa recounted a separate episode in which Ramiro penetrated her vagina with a foreign object, i.e., his fingers. The episode occurred at Vanessa’s aunt’s house. While Vanessa was asleep, Ramiro came into her room and started touching her. When asked where the touching occurred, Vanessa testified, “In my vagina.” That qualifies as the third act of

substantial sexual conduct. Therefore, Ramiro's challenge to the sufficiency of the evidence cannot prevail.

III

Next, Ramiro maintains he was too young to understand the wrongfulness of his conduct. Again, we disagree.

At the time Ramiro started molesting Vanessa, in March of 1997, he was a month shy of his 13th birthday and presumably incapable of committing a crime. (See § 26, subd. One; [children under the age of 14 are presumed incapable of criminal conduct].) To overcome this presumption the prosecution had to present clear proof, i.e., clear and convincing evidence, that Ramiro knew the wrongfulness of his acts when he committed them. (*Ibid.*; *In re Manuel L.* (1994) 7 Cal.4th 229.) “Although a minor’s knowledge of wrongfulness may not be inferred from the commission of the act itself, ‘the attendant circumstances of the crime, such as its preparation, the particular method of its commission, and its concealment’ may be considered. [Citation.]” (*People v. Lewis* (2001) 26 Cal.4th 334, 378.)

Ramiro claims the circumstances surrounding his acts were such as to suggest he was merely curious about and experimenting with his sexuality. But his conduct clearly transcended the limits of curiosity and experimentation. He subjected his cousins to repeated acts of vaginal and anal penetration during which he achieved sexual gratification. And, he frequently struck when they were most vulnerable, such as when they were alone, asleep or secluded in a closet. This enabled him to carry out his crimes more easily and avoid detection. Ramiro also told his victims to remain quiet about his conduct, which indicates he knew what he was doing was wrong. Moreover, he continued his course of conduct until he was nearly 15 years old. “[I]t is only reasonable to expect that generally the older a child gets and the closer [he] approaches the age of 14 the more likely it is that [he] appreciates the wrongfulness of [his] acts.’ [Citation.]” (*People v. Lewis, supra*, 26 Cal.4th at p. 378.) For all these reasons, we find the evidence amply supports the

juvenile court's implied finding that Ramiro knew the wrongfulness of his conduct when he sexually assaulted his cousins.

IV

Ramiro further asserts that he lacked the requisite intent to commit a lewd and lascivious act on his victims and that therefore his convictions for continuous sexual abuse cannot stand. He is incorrect for two reasons. First, the record, as detailed above, clearly reflects that Ramiro touched his victims with the intent to arouse his sexual desires. Therefore, the mental element for lewd and lascivious conduct was satisfied. (See *People v. Martinez* (1995) 11 Cal.4th 434, 452.) Second, and more fundamentally, such conduct is not required for the offense of continuous sexual abuse. The offense encompasses lewd and lascivious conduct *or* substantial sexual conduct. (§ 288.5.) Having found that Ramiro committed three or more acts of substantial sexual conduct against his victims, it is immaterial whether he harbored the requisite intent to commit lewd and lascivious conduct.

V

Lastly, Ramiro contends the court erred in committing him to CYA. The contention lacks merit.

We review the court's decision under the abuse of discretion standard, and in so doing we indulge all reasonable inferences in favor of the court's ruling. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1395.) We must keep in mind that the juvenile law has "shifted its emphasis from a primarily less restrictive alternative approach orientated towards the benefit of the minor to the express 'protection and safety of the public' [citation] where care, treatment, and guidance shall conform to the interests of public safety and protection. [Citation.]" (*Id.* at p. 1396.)

Nonetheless, the record belies Ramiro's claims the court abused its discretion by relying exclusively on the seriousness of his offenses and failing to consider alternatives to CYA. While the seriousness of Ramiro's offenses was an important element of the court's decision, the court also relied on the fact Ramiro repeatedly violated the trust

of multiple victims who were “too young, too naive or too socially inexperienced to understand or comprehend . . . how they were being victimized.” The court was also struck with Ramiro’s utter lack of remorse for his actions. It described his attitude as “not conducive” to rehabilitation and expressly rejected the idea of an alternative placement. The court simply felt that Ramiro’s “rehabilitative needs could not be met in a local facility” and that CYA was the only facility available to “deal with the sexual misconduct issues that are presented by this case.” Viewing the dispositional ruling in its entirety, it is clear the court carefully considered all of the pertinent factors in making its decision, and we find no abuse of discretion of any kind.

The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

O’LEARY, J.